ant intended the result. The defence that the false statement was of an immaterial fact should not be valid, for while the amount of the consideration in most conveyances is of no moment, yet when an investment of money on the security of the land conveyed is thereby induced, the statement becomes distinctly material. See *Belcher* v. *Costello*, 122 Mass. 189. Though it is in general true that no one relies on the statements of the price paid, yet here the plaintiff did rely on it: and there is little force in the assertion that because most people are not misled, therefore one who is misled shall be barred from redress. In every case it remains a question of fact whether or not the plaintiff was actually deceived. Nor is it a valid excuse that the plaintiff was negligent in not examining the title to the property for herself. The damage was intentionally inflicted, and contributory negligence is no defence to an intentional tort. *Cottrill* v. *Krum*, 100 Mo. 397. In apparent contradiction are the many cases of "seller's talk." But it is conceived that these are to be distinguished as cases in which the plaintiff did not in fact rely and was not intended to rely on the statements made. One ground adopted in the principal case was that no representation was made by the defendant to the plaintiff. The law seems settled however, that if a representation be made to a class, or with intent to deceive a class, of which the plaintiff is one, no direct personal communication is necessary. *Bedford* v. *Bagshaw*, 4 H. & N. 538. It seems, upon analysis, that the decisions similar to that of the principal case are based upon remoteness. The injury is considered as not a natural and probable result of the defendant's act. Undoubtedly this argument appears sound to all who are familiar with the absolute meaninglessness of statements of consideration in conveyances. But here the statements were inserted purely to deceive. The result was intended; and the principle that an improbable consequence, if intended and desired has the same legal effect as though it had been the natural and probable one, is eminently applicable. See JAGGARD, TORTS, 382; POLLOCK, TORTS, 2d ed., 28.

MEASURE OF DAMAGES FOR INTERRUPTION OF A WATER RIGHT. — A case recently decided in Wisconsin, gives rise to some interesting considerations in the law of damages. The plaintiff was entitled to the use of the water power at a dam and the defendant appropriated it during a considerable period. Though the plaintiff suffered no actual damage he was allowed to recover, in an action of tort, the fair market value of the water during the period that the defendant had used it. *Green Bay, etc., Canal Co.* v. *Kaukaunee Water Power Co.*, 87 N. W. Rep. 864.

At first sight it would seem that the plaintiff should recover, in a tort action for the interruption of an incorporeal right, only for the damage he has suffered; that is, a nominal amount to establish his right, but no more unless he has sustained actual loss. In awarding damages, however, the generally acknowledged purpose is compensation, that is to restore to the plaintiff an equivalent for being deprived of some right. See SEDG., DAM., 8th ed., § 29 *et seq.* In whatever form the action be brought, it is believed this principle will apply. So in contract and trover the plaintiff is compensated for the right to certain property which the defendant has kept or taken from him, in personal actions of tort it is for the right to good health or reputation. In actions for interference with real pro-

perty, whether the plaintiff has had property injured or has been merely kept from the enjoyment of that to which he was entitled, in these, as in other cases, he should recover for the right of which he has been deprived.

The question thus becomes, how shall the value of the right, for which compensation must be made, be estimated? It seems general law that the plaintiff should recover for the fair value of that right, irrespective of whether or no he desired to exercise it. On the one hand he cannot recover an extra amount because of any peculiar value he attached to the right in question. *Moseley* v. *Anderson*, 40 Miss. 49. On the other he is not deprived of compensation to its full value because he was not about to make full use of it. *Patterson* v. *Mississippi Boom Co.*, 98 U. S. 403. The defendant cannot mitigate his liability to pay for the value of the right of which he has deprived the plaintiff by showing that owing to the plaintiff's peculiar situation the actual effect upon him was small. See *Elmer* v. *Fessenden*, 154 Mass. 427. *Storrs* v. *Los Angelos Traction Co.*, 66 Pac. Rep. 72 (Cal.). This principle would seem to apply to all classes of cases. See SEDG., DAM., 8th ed., § 2431. Thus in an action for the wrongful uses of a way, damages were assessed, not by the mere actual injury done to the land, but at what would be a reasonable rent for a license; in other words the fair value of the right. *Jegon* v. *Vivian*, L. R. 6 Ch. App. 742. So in the principal case it seems just that the defendant should pay for the water he has appropriated. The plaintiff was entitled to its flowage, his right was taken away from him, and according to the general rule the fact that he did not care to use the right in no way affects the determination of its value. Moreover if the defendant had to pay nominal damages only, he would be in a better position as a trespasser than if he had rightfully leased the water right. See *De Camp* v. *Bullard*, 159 N. Y. 450. The real injury then, which the plaintiff has suffered is the loss of a right, and his true measure of damages is not merely what that loss has happened to cost him, but its fair market value.

RECENT CASES.

BANKRUPTCY — GENERAL ASSIGNMENT — ALLOWANCE FOR SERVICES OF ASSIGNEE. — *Held*, that an assignee under a general assignment, which was later taken advantage of as an act of bankruptcy, is not entitled to compensation for services rendered prior to the filing of the petition in bankruptcy. *Wilbur* v. *Watson*, 111 Fed. Rep. 493 (Dist. Ct., R. I.).

Under the present Act, general assignments are valid unless followed by bankruptcy proceedings. *In re Romanow*, 92 Fed. Rep. 510; *In re Sievers*, 91 Fed. Rep. 366. The trustee in bankruptcy, however, may avoid the assignment and recover the property. *Davis* v. *Bohle*, 92 Fed. Rep. 325. Although not specifically provided for, this result is correct, being clearly within the spirit of the statute. See 13 HARV. L. REV. 147. The result is reached by treating general assignments as within § 67 *e*, calling them "constructively fraudulent," being "frauds upon the Bankruptcy Act." *In re Gutwillig*, 92 Fed. Rep. 337; *Matter of Gray*, 47 N. Y. App. Div. 554. Since they are not wrongful *ab initio*, and not actually fraudulent, this would seem an unfortunate use of language, which has apparently led the court in the principal case to regard the assignee as a wrongdoer; the allowance being refused because the assignee is regarded as an actor in a fraudulent transaction. The assignee is not one of the creditors of the bankrupt, but since the estate may have received benefit from the assignee's services, the amount of that benefit might well be granted. This was done in *In re Scholtz*,